



## Family Medical Leave Act Policy

- A. PURPOSE.** To provide eligible employees with job-protected time off work for serious health conditions, the birth or placement of a child for adoption or foster care, or to care for a family member with a serious health condition as provided in the Family and Medical Leave Act of 1993 (FMLA). During this leave, the employee's job status is protected and MCCC will continue to pay its portion of the employee's health care benefits (if applicable).
- B. APPLICABILITY.** All employees who have been employed by MCCC for at least 12 months and have actually worked at least 1,250 hours during the 12 months prior to the leave.
- C. POLICY.**
1. Introduction. Family and Medical Leave (FML) is a leave of absence taken by employees for specified medical reasons, during which MCCC shall maintain the employee's health insurance (if applicable) in the same manner as if the employee remained in active pay status. During the leave, however, such employees must continue to pay the employee's share of health insurance premiums. Employees returning from FML shall be reinstated to the position held by the employee when the leave began or an equivalent position with equivalent employment benefits, pay and other terms and conditions.
  2. Entitlement to Leave.
    - a. Generally, eligible employees are entitled to a total of 12 workweeks of FML during a rolling 12-month period measured backward from the date on which the employee uses any FML. Employees may take the leave for any of the following reasons:
      - i. Birth of a child of the employee and to care for the newborn child.
      - ii. Placement of a child with the employee by way of adoption or foster care.
      - iii. To care for the spouse, child, parent or one who stood in place of a parent of the employee, if that person has a serious health condition.
      - iv. Because of a serious health condition that renders the employee unable to perform any of the essential functions of the employee's position; or
      - v. Any qualifying exigency when the employee's spouse, child or parent is on active duty or is notified of an impending call or order to active duty in the Armed Forces (including the Reserves and National Guard) in support of a "contingency operation."

- b. Military Caregiver Leave Entitlement. Eligible employees are entitled to a total of 26 workweeks in a single 12-month period per-covered service member, per-injury, measured forward from the date the employee's leave begins, to care for a spouse, child, parent, or next of kin who is a service member undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on the temporary disabled retired list for a serious injury or illness.
3. Use of Paid Leave. Employees meeting specified eligibility requirements are entitled to various paid leaves of absence (i.e., sick, vacation, holidays, compensatory time, etc.), as described in this manual. Employees are required to use all applicable paid leave to the employee's credit (except compensatory time) in conjunction with FML. Employees requesting paid leave for FML must comply with the employee's department's normal procedures for use of paid leave. MCCC will designate an employee's use of paid leave as FML based on the information provided by the employee or employee's spokesperson. Employees will be notified when paid leave is designated as FML. Paid leave that is substituted for unpaid leave will be counted toward the 12 weeks of FML.
4. Holidays. Time off on a recognized holiday shall count against the employee's FML entitlement if the employee is on FML the entire week during which the holiday is observed.
5. Leave Increments. FML shall be counted in increments of 15 minutes.
6. Husband and Wife. In a case in which a husband and wife are both employed by MCCC, requests for leave due to the birth or placement with the employees of a child, or to care for either employee's parent who has a serious health condition, the aggregate number of workweeks of FML to which both employees are entitled shall be limited to 12 workweeks combined during the leave year.
7. Intermittent/Reduced Leave.
  - a. Generally, leave due to the serious health condition of the employee or the employee's spouse, child or parent, or for military caregiver leave, may be taken intermittently or on a reduced leave schedule when medically necessary. MCCC may require an employee taking foreseen leave in this manner for planned medical treatments to transfer temporarily to an alternative position which has equivalent pay and benefits in order to better accommodate the recurring periods of leave. The use of intermittent or reduced schedule leave shall not reduce the total amount of leave to which the employee is entitled. Leave due to the birth or placement with the employee of a child may be taken on an intermittent or reduced leave schedule in consultation with Human Resources and the immediate supervisor.
  - b. Deductions for Exempt Employees. MCCC may make deductions from an exempt employee's salary for time taken as intermittent or reduced FML within a workweek, without affecting the exempt status of the employee. The deductions may be taken in 15 minute increments and designated on the employee's timesheet as FML. In such case the employee shall be required to use all applicable paid leave in conjunction with FML.

8. Benefit Accrual during Leave. Sick, vacation and other paid leave will accrue in accordance with Mercer County Community Colleges Collective Bargaining agreements for covered employees.
9. Working/Attending School While on FML. Employees on FML may not work, perform services, receive, or earn compensation for or from any other entity, including the employee's own business, from the beginning of such absence until the employee returns to work, unless authorized in advance by the Vice President for Human Resources. In addition, any service contract with MCCC will be cancelled during FML. Employees on FML for their own serious health condition may not attend classes at MCCC and are therefore not eligible for tuition waiver as defined by collective bargaining unit contracts and OMB 358 while on FML.

Teaching while on FML. Teaching may be permissible when the employee is approved for intermittent FML and the schedule is pre-approved by the Dean, Divisional Vice President, and the Vice President for Human Resources.

10. Reinstatement.
  - a. Generally, employee's returning to work from FML shall provide the Office of Human Resources with at least one week's notice of intent to return. The Office of Human Resources will notify the employee's supervisor of the employee's intended date of return. When an employee not in a "key" position returns from FML, the employee will be restored to the position held by the employee when the leave began or an equivalent position with equivalent employment benefits, pay and other terms and conditions. The employee taking FML shall not lose any employment benefit that accrued prior to the commencement of leave.
  - b. Key Employees<sup>1</sup>. If an employee's position is determined to be "key", the employee may be denied reinstatement when:
    - i. MCCC shows that denying reinstatement is necessary to prevent substantial and grievous economic injury to MCCC's operations.
    - ii. MCCC notifies the employee that reinstatement will be denied at the time MCCC determines that grievous economic injury would occur; and
    - iii. The employee already has begun the leave and elects not to return to employment within a reasonable time after receiving MCCC's notice.
  - c. Certification. The employee's physician shall be required to certify that the employee is able to resume performing all of the essential functions of the employee's position as a condition of return to employment.
11. Payment of Insurance Premiums for Failure to Return from Leave. If the employee fails to return from FML, the employee may be required to reimburse MCCC for the total insurance premiums paid by MCCC for the period of FML during which the employee was on unpaid leave, unless the failure to return is due to:
  - a. Continuation, recurrence or onset of a serious health condition; or

- b. Other circumstances beyond the employee's control.

In such cases, MCCC shall require medical certification. If an employee fails to provide certification or an adequate excuse, the employee shall be liable for the total insurance premium paid during the unpaid portion of the leave by MCCC.

12. Employee's Notice Responsibility. An employee requiring FML must provide MCCC with as much advance notice of the need for leave as possible. The Office of Human Resources will provide employee with Medical Certification Form to be completed by physician, and Intent to Request FML Form to be completed by employee. These forms are due to The Office of Human Resources within fifteen (15) days of receipt. The minimum required notice under the FML is as follows:

- a. When the need for leave is foreseeable, including planned medical treatment for a serious illness or injury of a covered service member (if practicable), the employee must provide 15 days' advance notice.
- b. If 15 days' advance notice is not practicable, notice must be given as soon as practicable, after the need for the leave becomes known to the employee.
- c. If the approximate timing for leave is not foreseeable, the employee must still provide notice of the need for leave as soon as practicable.
- d. Employees must promptly provide the Office of Human Resources with a written statement signed by the medical provider that includes information regarding: the date the leave will begin, the anticipated return to work date, whether the absence will be full-time or part-time, and if there are any restrictions. Any change in such information must also be submitted promptly.
- e. Notice of the need for leave is provided by the employee on forms available in the Department of Human Resources.

In addition, if MCCC requires additional information in order to determine if the absence is FML-qualifying, the employee must respond to MCCC's request for such information as soon as possible. Failure to respond may result in denial of FML.

13. Call-in Procedure. Employees requesting paid or unpaid leave for FML must comply with the employee's department's normal call-in procedures.
14. Notice to Employee. Within five business days, or as soon as is feasible after notice of the need for leave is provided by the employee, the Office of Human Resources will provide the employee with detailed written notice of:
  - a. MCCC's FML expectations and policy;
  - b. The employee's rights and obligations (including the amount of insurance premium that must be paid, if applicable);
  - c. The consequences of an employee's non-compliance;
  - d. The fact that the leave will be counted against the employee's annual FML entitlement and how it is measured; and
  - e. The requirements regarding medical certification.

15. Initial Certificate of Serious Health Condition. Employees who request FML must provide MCCC with certification of the condition from a health care provider in cases involving serious health conditions and attach the certification to the request for leave at initial request. Employees must provide sufficient information for MCCC to determine if the leave may qualify for FML protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities; the employee has the need for hospitalization or continuing treatment by a health care provider, or has the circumstances supporting the need for military family leave. Employees also must inform MCCC if the requested leave is for a reason for which FML was previously taken or certified. Upon receipt of the certification, MCCC may, at its expense, require the employee to obtain a second opinion from a health care provider selected by MCCC. MCCC may deny FML if the employee refuses to release relevant medical information to the health care provider designated by MCCC to provide the second (or third) opinion. MCCC's health care provider or the Department of Human Resources may, with the employee's permission, contact the employee's health care provider directly for verification or clarification purposes, but will not seek additional information from the provider. Prior to contacting the employee's health care provider, MCCC will ask the employee to correct the deficiencies in the certification. If the second opinion differs from the first, MCCC may, at its expense, require the employee to submit to a third examination by a health care provider jointly selected by MCCC and the employee. The cost of a third party examination is borne by MCCC and the third party opinion shall be final and binding. MCCC shall provide the employee with a copy of the second and third opinions within five (5) business days of receipt.

16. Recertification.

- a. For pregnancy, chronic or permanent/long-term conditions under continuing supervision of a health care provider, MCCC may request recertification every 30 days while the employee is on leave. However, if circumstances described in the previous certification change significantly (i.e., the severity of the condition, complications, etc.), MCCC may immediately request recertification.
- b. If the minimum duration of the incapacity specified on an initial certification is more than 30 days, or if the leave is taken on an intermittent or reduced scheduled basis, MCCC may not request recertification before the minimum duration of the specified leave expires unless one of the conditions described in subparagraphs C (16) (c) (i) through (iii) below is met.
- c. For circumstances not covered by this paragraph C (16), MCCC may request recertification at any reasonable interval (but not more often than every 30 days), unless:
  - i. The employee requests an extension of leave; or
  - ii. Circumstances described by the previous certification have changed significantly (i.e., duration or nature of the illness, complications, etc.); or

- iii. MCCC receives information that casts doubt upon the continuing validity of the certification. If one of the conditions of subparagraphs C (16) (c) (i) through (iii) occurs, MCCC may immediately request recertification.
  - d. MCCC may request the same information on recertification as is permitted during initial certification. The employee has the same obligation to cooperate with MCCC during the recertification process as in the initial certification process.
17. Certification Deadline. Employees shall provide requested certification within 15 calendar days unless this time limit is not practicable (for example winter break or holidays). Failure to provide this certification may invalidate the leave. Employees are solely responsible for any costs associated with obtaining requested certification.
18. Fitness for Return to Duty. If MCCC requires a fitness-for-duty certification prior to returning an employee on FML to duty, any physical requirement will be job-related and consistent with business necessity and may only be sought with regard to the condition that caused the need for FML. MCCC's health care provider may, with the employee's permission, contact the employee's health care provider to clarify fitness for duty, but will request no additional information. The employee has the same obligation to cooperate in the fitness-for-duty certification process as described in the certification/recertification process above. Failure to provide a fitness-for-duty certification at least one week prior to return to duty may terminate the employee's right to reinstatement unless the employee has requested additional FML.
19. Employees' Failure to Pay Insurance Premium. Upon commencement of FML, MCCC shall continue the employee's health insurance (if applicable) as if the employee were not on leave. However, MCCC's obligation shall cease if the employee is more than 30 days late in tendering the employee's share of the premium. In such a case, MCCC shall provide the employee a written notice of the discontinuance of coverage by mailing such notice at least 30 days before the date coverage will cease.

Board of Trustees Meeting  
July 16, 2020

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